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ARIZONA ATTORNEY GENERAL

February 18, 1975

The Honorable Marcia G. Weeks
State Senator, District 16
Senate Wing, State Capitol
Phoenix, Arizona 85007

Dear Senator Weeks:

This is in response to your letter of January 20 to this office asking whether or not it is advisable to make mandatory the recording of a trust agreement in the same proposed law requiring the recording of all documents of conveyances of real property involving a corporate trustee.

Research by this office indicates that three states, within the purview of their recording statutes, require the recording of trust agreements. See Mississippi Code, Iowa Code Annotated 558.41 and Oklahoma Title 60, sec. 172. This office subscribes to the belief that there are two definite advantages to having the instrument recorded. The principal purpose of recording under the statute is generally not to aid in the creation of the trust but instead the purpose is to protect the beneficiary or beneficiaries against a second conveyance or transfer of the identical equitable interest to a bona fide purchaser which may cut off the original beneficiary's interest. Recording the instrument would give at least constructive notice effectively insuring against subsequent bona fide purchasers. Second, and perhaps more important, recording of the instrument will allow greater access in cases when investigation may become necessary. The filing of the instrument itself will not only divulge the existence of a trust, but also will make known the trustee and the designated beneficiaries.

Accordingly, for the above two reasons, this office deems it advisable to include the recording of the instrument itself in your proposed recording law.

Sincerely,

BRUCE E. BABBITT
The Attorney General

MICHAEL M. SOPHY
Special Assistant
Attorney General

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